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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Recon Optical, Inc.--Request for
Reconsideration

File: B-232125.2

Date: February 24, 1989

DIGEST

Request for reconsideration that does not show errors of fact or law in the prior decision and which basically reiterates arguments that were previously made and considered in the initial bid protest does not warrant reevaluation of the prior decision.

DECISION

Recon Optical, Inc., requests reconsideration of our decision Recon Optical, Inc., B-232125, Dec. 1, 1988, 88-2 CPD ¶ 544, denying in part and dismissing in part the protest Recon Optical filed against the Air Force's award of a contract to Fairchild Weston Systems, Inc., for an electro-optical long range photography system (EO-LOROPS) pursuant to request for proposals (RFP) No. F42600-88-R-60105.

We deny the request for reconsideration.

In its initial protest, Recon Optical alleged a multitude of improprieties in virtually every phase of the procurement, including the solicitation provisions as well as the evaluation and selection process. In our decision on the protest, we indicated that, because the allegations were so numerous and the arguments in support of them so voluminous, we would not restate and discuss each allegation. We did state, however, that we did consider all of the arguments raised by Recon Optical, the Air Force, and the awardee, and did examine the entire record in reaching our decision.

Recon Optical first argues that our Office erroneously dismissed as untimely an allegation that the Air Force improperly gave the system performance technical characteristics evaluation factor the same weight as the supportability evaluation factor in its evaluation of proposals.

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The RFP stated that proposals would be evaluated on three factors listed, in descending order of importance, as: price, system performance technical characteristics, and supportability. Recon Optical argued that the evaluators improperly considered system performance technical characteristics and supportability each to be worth 30 percent of the total evaluation score while price was considered to be worth 40 percent. Recon Optical asserted that giving equal weight to the system performance technical characteristics and supportability evaluation factors was inconsistent with the RFP's statement that the evaluation factors were listed in descending order of importance. We dismissed this issue as untimely, because the evaluation scheme was set forth in the RFP and, therefore, the alleged solicitation defect should have been protested before the closing date for receipt of initial proposals under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1), (1988).

Recon Optical now argues that this protest issue was not untimely, because nowhere in the solicitation was the descending order of importance language contradicted, and because Recon Optical filed its protest in our Office within 10 working days after the debriefing conference at which it first became aware that the two technical evaluation factors had been given equal weight by the evaluators.

Recon Optical's argument is not persuasive. It is true that the RFP indicated that the evaluation factors were listed in descending order of importance. However, the RFP's evaluation section referred offerors to section M of the RFP which contained a list of the subfactors that were to be evaluated within each evaluation factor, and set out the number of evaluation points that were available for each subfactor. Section M plainly showed that the maximum score that could be obtained for both system performance technical characteristics and supportability was 1,000 points. Thus, it should have been clear to Recon Optical from reading the RFP that the Air Force considered these two evaluation factors of equal importance. Furthermore, to the extent that the evaluation section may have been inconsistent with section M, this inconsistency also should have been apparent from the RFP itself. Accordingly, we remain of the view that the issue was untimely as the protest was filed 3 weeks after the contract had been awarded to Fairchild, well after the initial closing date.

Recon Optical also contends that our Office erred, because we disregarded Recon Optical's argument that the award to Fairchild was improper in that the photography Fairchild will supply is not an off-the-shelf system as required by the RFP, but rather contains components that are

developmental in nature. This contention also is without merit.

We considered the protester's allegation that the RFP prohibited offers of developmental items in resolving Recon Optical's initial protest, even though we did not discuss it in our earlier decision due to the great number of issues raised by Recon Optical. The RFP provision to which Recon Optical refers was contained in the statement of work and stated:

"It is intended that EO-LOROPS will maximize the use of existing hardware and software (including refurbished equipment), thereby minimizing design and development efforts."

While this provision obviously encouraged offerors to keep new design to a minimum, it simply does not prohibit acceptance of an offer that will require some developmental effort. We note in this connection that the Air Force reported that the system Recon Optical itself proposed was not entirely made up of off-the-shelf components either. In any event, Recon Optical's argument provides no basis for overturning the award to Fairchild.

Recon Optical next complains that the Air Force improperly refused to give certain evaluation documents to Recon Optical for use in its bid protest and that our Office should not have reviewed those documents in camera without giving Recon Optical an opportunity "to examine and controvert the deficient technical evaluation."


Under the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(f) (Supp. IV 1986), contracting agencies are not required to provide to protesters and other interested parties documents related to a protested procurement action that would give them a competitive advantage or which the parties are not otherwise authorized by law to receive. Here, the Air Force gave Recon Optical many of the documents the firm requested, and withheld only certain evaluation materials, including parts of the awardee's proposal, on the grounds that release of those documents might give Recon Optical a competitive advantage in future procurements and because the documents were part of the agency's internal deliberative process. Despite its decision to withhold the materials themselves, the Air Force submitted a very detailed report to our Office and the interested parties responding to the arguments raised and summarizing the source selection process. After considering Recon Optical's arguments that the requested documents should be released, we determined that the Air Force had properly withheld the

documents. Further, while the Air Force did not give Recon Optical materials concerning Fairchild's proposal, evaluation of Fairchild's proposal and the evaluation plan itself, the Air Force did submit all of the evaluation documents and the proposals to our Office for our use in resolving Recon Optical's protest. As is our practice in such cases, we reviewed all of the materials and based our decision on the entire record. See, e.g., Bell Technical Operations Corp., B-225819; B-225819.2, May 21, 1987, 87-1 CPD ¶ 534. Accordingly, Recon Optical's argument in this regard provides no basis to reverse or modify our prior decision.

In the remainder of its request for reconsideration, Recon Optical argues that "[t]here are numerous other errors of fact and law, and an acknowledged failure to address specific issues except in the most general of terms." Recon Optical, essentially, has restated a host of arguments already made and considered by our Office in resolving the original protest, and, therefore, has provided no basis for us to reverse our prior decision. Durable, Inc.--Reconsideration, B-228911.2, Dec. 31, 1987, 88-1 CPD ¶ 5.

Recon Optical also has requested a conference on its request for reconsideration. We deny the request since no useful purpose would be served by conducting such a conference. See Neal & Co., Inc., B-228570.2, Jan. 5, 1988, 88-1 CPD ¶ 3.

The request for reconsideration is denied.


James F. Hinchman
General Counsel